

IDEM Headwater Forum

1st Stakeholder Roundtable – Meeting Minutes
June 27, 2007; 12:45 – 4:00 PM; State Conference Center

The morning workshop session was held from 9:00 – 12:00 noon in the auditorium, with approximately 85 people in attendance. Brian Frazer from EPA Headquarters presented about the Rapanos decision and the recent Corps/EPA Guidance. Richard Rheinhardt then presented about the importance of headwater systems and a rapid assessment approach.

Boxed lunches were provided in Room 18 for the Roundtable Stakeholders.

The Roundtable meeting began at 12:45 with a welcome and brief background and introduction of the stated purpose of the project by the facilitator, Mike Schlegel

- The Background for the project was the Rapanos case and uncertainty about the jurisdictional status of small headwater streams
- IDEM wanted to convene a stakeholder group and public workshop to get input and recommendations from stakeholders on permitting headwater stream, tributaries and ditches
- The Purpose of the Headwater Forum is to Develop New Concepts or Requirements to Improve the Effectiveness of the Wetlands Program
- Essentially, the Roundtable Stakeholders are charged with Developing Collaborative Recommendations for Permitting and Mitigating impacts to Headwater streams, tributaries and ditches in Indiana
- IDEM further specified that the goal is not to create rules, but to develop guidance that adds clarity to the program

The stakeholders then introduced themselves and their involvement in stream permitting and restoration

Thomas Cervone, Bernardin Locchmueller
Doug Shelton, Corps-Louisville
Dennis Clark, IDEM Assessment Branch
Jon Eggen, DNR Division of Water
Matt Buffington, DNR Division of Fish and Wildlife
Bruce Kingsbury, IPFW
Mike Litwin, USFWS
Chris Knochel, Newton County Surveyor
Dennis Wichelns, Hanover College
John Shuey, Nature Conservancy
Heather Bobich/Amy Smith, JFNew
James Robb, IDEM Wetlands Branch
Martha Clark Mettler, IDEM Office of Water Quality
Bob Barr, CEES/IUPUI
Steve Sperry, INDOT

The facilitator identified his role as keeping the group on track and helping the group work together, come together and reach agreement

The facilitator then identified the four core values of collaborative decision makings as

- Full Participation
- Mutual Understanding

- Inclusive Solutions
- Shared Responsibility

The group then created a list of Ground Rules for the group's discussions

- No side conversations
- No talking over others – one person speaks at a time
- Moderator allows all to participate
- Do not dominate the discussion
- Show consideration and respect
- Commitments to participate or send an alternative
- No rehashing old topics
- Speak freely and agree to disagree
- Allow disagreement
- Be open minded
- Be open to new ideas
- See others points of view
- Stay on topic
- Start and end on time
- Be concise

The state was asked to provide clarity to the specific questions and deliverables that they want this group to consider. The two primary considerations are the question of how to regulate streams that do not fall under federal jurisdiction and what is required for stream mitigation in general.

There was a brief discussion about jurisdiction and what are the Waters of the state. IDEM identified that the definition includes

- All waters of the us
- All surface and subsurface collection of water
- Except private ponds

The bulk of the meeting was devoted to identifying, organizing and prioritizing the issues that we want to address as a group through the course of 4 roundtable meetings. Each stakeholder was asked to write 3-5 issues or questions that are involved in headwater jurisdiction, permitting, assessment, mitigation, or implementation that we should address. The individual issues and questions were grouped by the stakeholders and were reviewed as a group. The issues and categorizes follow.

1. Functions and Values

- What are the values of headwater streams?
- What are the core values that we intend to have regulation to protect?
- What are the important functions of headwater streams?
- Are headwater streams valuable, are all valuable, why, and how can we tell?
- Are these functions considered valuable to the extent that they should be regulated?
- Ecological processes, such as nutrient processing, energy flow and aquatic habitat are valued by Indiana citizens and should be protected.
- Floodplain connecting needs to be addressed, i.e. connectivity with riparian habitats needs to be valued.

2. Geographic Jurisdiction

- What are the definitions of ephemeral, intermittent and seasonal streams?
- How is a headwater stream defined?
- What is the definition of a headwater, defined bed and bank, and what is the extent of a headwater?
- How do we define the upstream limits of jurisdictional headwaters?
- Are headwater regulations going to include subsurface flow?
- Can this committee clearly define how far up a stream JD occurs? This is important for consistency in field biologists and between agencies. Can size for bed or bank be reported for us all to use?
- In intermittent streams, jurisdiction should extend upstream along the defined stream channel. If fluvial processes are evident, then it should be jurisdictional.
- What is the extent of state jurisdiction over streams?

3. Jurisdictional Activities

- How do we define the impacts to headwaters, and if it's dry, what constitutes fill?
- What is the nature of regulated activities (de minimus fill, grading, excavation)?
- Should headwater and/or small watershed dams, instream detention, stormwater basins, and pollution control devices be allowed in streams?
- Is instream construction or excavation regulated under rule 5, phase II and 401 and if so, how is it enforced and what are the limits?
- Is the alteration of hydrology regulated under this program (i.e. dewatering of streams or adding water to an intermittent stream, which may be negative ecological impact)?
- Does dredging damage the integrity of a stream?
- What activities are covered for regulated drains?
- What is the evaluation of impacts (dredging, impoundment)?
- Including local jurisdictional headwater streams exercising best management practices.

4. Assessment Protocols

- How can headwater streams be assessed?
- What assessment methods should be used on streams?
- What are the best assessment tools for documenting functions and values of headwater streams?
- What is the best assessment tool for headwater streams, and can it apply to both existing streams and mitigation streams?
- Are the HHEI and QHEI assessments comprehensive enough to define the hydrologic function of a stream and its value as habitat for wildlife?
- Everyone's buy-in in a headwater habitat assessment protocol that agencies will promote. Presently, we're using HHEI but there is limited use. If we use HHEI, will the assessment be only physical and chemical or will biological indicators be included too?
- How do we assess cumulative impacts, especially in rapidly developing areas?

5. Mitigation

- Can headwater streams be mitigated?
- How do you mitigation for impacts to headwater streams to replace these functions?
- What is appropriate mitigation for headwater stream impacts?
- What is the appropriate nature of stream mitigation?
- What is the appropriate location of stream mitigation?

- What are the appropriate tools for mitigating headwater issues, the specific concern is equivalency and geographic position?
- What are the mitigation expectations for impacts?
- What is appropriate mitigation for impacts to headwaters, and what methodology should be used (Rosgen)?
- Clearer description of different types of mitigations for impacts would be helpful. Rosgen methods may be promoted in the state
- How can headwater streams be most effectively mitigated, in terms of a systems approach including riparian and channel habitat, going beyond stream morphology?
- What are the mitigation success criteria taking into account biological, chemical, and physical integrity?
- What are the criteria that need to be met in the design of mitigation streams? Also, how should the success of these streams be monitored?
- Mitigation should provide significant improvements in habitat value and hydrologic function. Habitat quality needs to be improved and floodplain should be connected to the channel.
- Mitigation/permits should consider downstream cumulative impacts to water chemistry (nutrients and toxins) and hydroperiod (peak discharge).
- Downstream impacts should be valued as highly as local impacts to the headwater site.
- Is preservation mitigation a form of mitigation that idem would strongly consider?

6. Policy Parking Lot

- Assuming that some headwater streams will no longer be covered under federal jurisdiction; should IDEM regulate these non-fed jurisdictional streams?
- How will the state regulate streams that fall outside of the Corps jurisdiction?
- How will the state handle headwater streams that fall outside of corps jurisdiction, and what will be the criteria that will determine whether or not the state will regulate these streams?
- What type of headwater stream is not permissible? Are there any? If there are, how is this determined?
- How have other states addressed the problem of regulatory headwater streams? What are the good examples, bad examples, and new ideas?
- Adding predictability and consistency in regard to defining headwaters, assessment methods to be used, and mitigation expectations.
- Can IDEM do anything to streamline the permitting process that seems to be getting longer as JD determinations from the Corps becomes increasingly difficult to get?
- Length of time for the entire process, assessment, permitting, mitigation, and implementation.
- Streamlining permitting would help where maybe data collection could present early findings to agencies before submitting application.
- What resources are available for stream assessment?
- How can the information and decisions gained through this forum be effectively shared with others including developers, county regulators, consultants and landowners?
- What are the incremental costs and benefits of regulating headwater streams, are they uniform or do they vary with location?
- How might we minimize the incremental costs on private entities and public agencies by optimizing consistency with the federal program?
- How can we encourage wise use and management of headwater streams at reasonable costs to private entities and public agencies?

This list of issues and questions will be the guide to future roundtable discussions.

The group discussed other potential stakeholders to be invited to participate in the roundtable.

The suggestions included:

- Indiana Chamber of Commerce
- Indiana Economic Development Corporation
- Indiana Association of Cities and Towns
- Indiana Utility Regulatory Commission
- Indiana Farm Bureau
- EPA Region 5
- USGS
- USFS
- Association of Soil and Water Conservation Districts

IDEM suggested that they need to have an internal discussion about the specific desired outcomes and what they would like the group to focus on.

The next meeting was set for Friday, September 14th. The agenda will focus on Functions and Values and Jurisdiction.

The suggested speakers for next meeting:

- Bob Davic – Ohio EPA
- John Dorney – NC DWQ